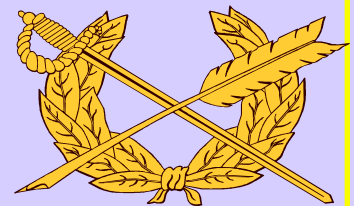
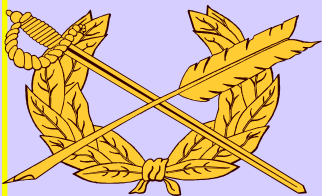




LEGAL ISSUES FOR COMMAND

Office of the
Staff Judge Advocate





MAJ Curt Burner

DEPUTY STAFF JUDGE ADVOCATE
FORT POLK, LA



Areas of Assistance

- CLAIMS
 - Chief, Mr. Craig Jenkins
 - 531-2636
- LEGAL ASSISTANCE
 - Chief, Mr. Lou Sherman
 - 531-2580
- ADMINISTRATIVE LAW
 - Chief, CPT Sean Mangan
 - 531-2754



CLAIMS



- Do NOT let soldiers move Army equipment in their POVs!
- Soldiers have only 70 days to turn in their notice of damage to their personal property after PCS moves.
- Change locks on barracks doors when soldiers move rooms – too many barracks larcenies with unforced entry!



LEGAL ASSISTANCE



- AR 608-99: Family Support, Child Custody/Visitation, & Paternity
- Soldier's & Sailor's Civil Relief Act
- General Services
- Hours:
 - MON, TUE, WED, FRI: 830-1130;
1230-1700
 - THU: 1300-1700 (WALK-INS)
 - Wills: WED 1230-1700



ADMINISTRATIVE LAW



- AR 15-6 investigations
- Reports of Survey
- Family Readiness Groups/Fundraising
- Fiscal Law/Contracts/Impac Credit Card Purchases
- Bar list & barring people from post



MILITARY JUSTICE





Military Justice Points of Contact

Chief of Military Justice

CPT Jimmy Bagwell, 531-0977, Bldg 407,
Radio Rd. James.Bagwell@polk.army.mil

Trial Counsel: Warrior Bde, JRTC Operations Grp, USAG, MEDDAC, DENTAC, VETCOM

CPT Evan Seamone, 531-2779, Bldg 407,
Radio Rd., Evan.Seamone@polk.army.mil

Trial Counsel: 2d Armored Cavalry Regiment

CPT Andy McKee, 531-0628, Bldg 404, Radio
Rd., Andrew.McKee@polk.army.mil



Main Areas of Help



- Commander's Options
- Non-Judicial Punishment under Article 15
- Courts-Martial
- Administrative Separation
- Legal Advice on other issues



Commander 's Options



The Cardinal Rule of Military Justice:

ALWAYS consult your
trial counsel



Commander's Options

- Commanders have a wide range of options for handling misconduct
- Goal is to use response that is warranted, appropriate, and fair
- Higher commander can not order subordinate commander to take particular UCMJ action – GUARD AGAINST UNDUE COMMAND INFLUENCE!
- BUT, Higher commander can withhold UCMJ authority at her/his level



5 COMMANDMENTS OF COMMAND INFLUENCE



1. The Commander May Not Order a Subordinate to Dispose of a Case in a Certain Way.
2. The Commander Must Not Have an Inflexible Policy on Disposition or Punishment.
3. Witnesses May Not be Intimidated or Discouraged From Testifying.
4. The Court Decides Punishment. An Accused May Not Be Punished Before Trial.
5. If a Mistake is Made, Raise the Issue Immediately.



Commander's Options

- Non-Judicial
 - Counseling
 - Bars to Reenlistment
 - Corrective Training
 - Reprimands
 - Punishment (Article 15)
 - Administrative Separation
- Judicial: Courts-Martial



Counseling

- Can be either oral or **written**
- Essential for separation actions -- **"Magic Counseling"** AR 635-200, para 1-16
- Must contain sufficient facts to determine the basis for counseling the soldier
- Should use New Counseling

Forms



Corrective Training

- Corrective *TRAINING* is **NOT** *PUNISHMENT*
- Must relate to the Deficiency
- Must be closely tailored to correct the deficiency
- Must not be unduly embarrassing
- Strongly encouraged to be in Writing (Counseling Form latest edition)



Reprimands

- Can be either oral or **written**
- May be locally filed or OMPF filed (by GO)
- Includes statement that it is admin measure; not punishment under Article 15, UCMJ
- Will receive GOMOR for DUI offense, whether on or off



Non- Judicial Punishment t (Article 15)



Article 15

- AR 27-10, Military Justice, Part 3, and Manual for Courts-Martial Part V
- Imposed by commanders for minor disciplinary infractions or offenses.
- Purposes:
 - Correct, educate, and reform
 - Avoid stigma of court-martial conviction
 - Further military efficiency



Types of Article 15

SUMMARIZED

Max Punishment:

14 days extra duty

14 days restriction



Types of Article 15

COMPANY GRADE

Max Punishment:

7 days forfeiture of pay

14 days extra duty

14 days restriction

One grade reduction for E-4 and below



Types of Article 15

FIELD GRADE

Max Punishment:

Loss of 1/2 of monthly pay for 2 months

45 days extra duty

60 days restriction

E1-E4 can be reduced to E-1

E-5 & E-6 can be reduced one grade



Article 15 for Officers

- Company grade: Reprimand and 30 days restriction
- Field Grade: Reprimand and 30 days restriction
- General Officer: 30 days arrest, 60 days restriction, and 1/2 pay for 2 months
- **NOTE: CG has reserved all UCMJ authority over officers/CSMs**



Art. 15: Other Matters

- Always have a right to demand a court-martial
- Standard is same at trial: Beyond Reasonable Doubt
- Can appeal to next higher authority
- Suspension, vacation, mitigation, remission
- If defense attorney has submitted matters, let TC know



Courts- Martial





Courts-Martial



FOUR TYPES

- 1) Summary court-martial
- 2) Special court-martial (aka "straight special")
- 3) Special court-martial empowered to adjudge Bad-Conduct Discharge (aka "BCD special")
- 4) General court-martial



Summary Court-Martial



- No judge, just a commissioned officer
- No right to a defense attorney
- Max punishment:
 - 30 days confinement (E1-E4)
 - Reduction to E-1 (E1-E4)
 - Reduction one rank (E5 and above)
 - Loss of 2/3 pay for one month
- Referred by O-5 commander



Special Court-Martial



- Just like any other trial:
 - Prosecutor and Defense counsel
 - Rules of Evidence apply
- Max punishment--
 - 1 year confinement
 - Reduction to lowest rank
 - Loss of 2/3 pay per month for 1 year
- Referred by O-6 commander
- Rare



BCD



Special Court-Martial

- Variety of Special Court-Martial
- Max punishment--

1 year confinement

Reduction to lowest rank

Loss of 2/3 pay per month for 1 year

Bad-Conduct Discharge

- Referred by Commanding General



General Court-Martial



- Highest level of Court-Martial
- Requires an *Article 32* pretrial investigation hearing
- Can give a Bad Conduct Discharge or Dishonorable Discharge
- Max Punishment is the maximum punishment allowed for the article charged
- Referred by Commanding General



Do I Really Want a Court-Martial?



- Level of offense may not warrant
- Length of time
- Assets – both yours and the installation's
- Your involvement
- Another wrinkle: pre-trial confinement
- Refer to Cardinal Rule!



Administrati ve Separations



Administrative Separations



- AR 635-200, Enlisted Separations
- Various reasons for separation
 - Some are voluntary, soldier-initiated
 - Some are involuntary, chain-of-command-initiated
- Various types of possible discharge, based on type of separation
- Entitled to Board?



Why involuntarily chapter a Soldier?



- Some reasons for eliminating a soldier do not rise to level of criminal offense
- Ease/Speed v. conviction
- Always balance desire to punish the soldier v. desire to get rid of a soldier



Separations by Chapter



5--Convenience of the Government

6--Hardship

7--Fraud

8--Pregnancy

9--Alcohol or Drug Rehab Failure

13--Unsatisfactory performance

14--Misconduct

15--Homosexual Conduct

18--Overweight



Chapter 14-- Misconduct



Para 14-12b:Patterns of misconduct

Requires act of misconduct, followed by para. 1-16 "magic" counseling, followed by subsequent act of misconduct

Para 14-12c:Commission of a Serious Offense

Requires no counseling. Serious offense is one for which a punitive discharge could be adjudged



Characterization of Discharge



- Honorable Discharge
- General Under Honorable Conditions
 - First-term soldiers will lose GI Bill Benefits and the \$\$\$ they put in!
 - Loss of certain benefits
- Under Other Than Honorable Conditions
 - First-term soldiers will lose GI Bill Benefits and the \$\$ they put in!
 - Loss of more benefits



Who Is Entitled to a Board?



- If soldier has 6 years service, entitled to Board
- If chain of command wants an Other Than Honorable discharge, entitled to Board.
- Otherwise, not entitled to board; just a “notification procedure.”
- *Except for certain chapters (i.e. Ch. 15s)*



CHAPTER 10s



- Require preferral of charges
- Require CG approval
- Benefits: Shortened processing time & ability to recommend OTH w/o a board
- All cases DO NOT warrant a Chapter 10
- Need solid proof of offense – even then, not a “sure thing”
- MUST speak with your TC if think have an offense warranting a Chapter 10



Fraternizati on Policy



Fraternization Policy

- As of 1 March 2000, certain relationships between officer and enlisted prohibited
 - no dating or marriage after 1 Mar 00
 - certain other relationships prohibited
- See AR 600-20



What has not Changed



- The Army continues to prohibit all unprofessional relationships that:
 - compromise the chain of command
 - cause partiality or unfairness
 - involve the improper use of rank for personal gain
 - are exploitative or coercive in nature
 - create an adverse impact on discipline, authority, morale, mission accomplishment



What has not Changed (cont)



- Relationships that present the appearance of violating any of these standards may also be prohibited.



Business Relationships



- Business relationships between officers and enlisted personnel are prohibited.
- Exceptions
 - Landlord/tenant relationships
 - One time transactions (such as sale of an automobile or house)
 - For ARNG/USAR only, business relationships which exist due to their civilian occupation or employment



Personal Relationships



- Dating, shared living accommodations, and intimate or sexual relationships between officer and enlisted are prohibited.
- Exceptions
 - Marriages that exist now or are entered into prior to 1 Mar 00
 - Relationships that violate policy ONLY because of the promotion or change in status of one military member (EXAMPLE: two enlisted soldiers are married and one is commissioned through OCS).



Gambling



- Gambling between officers and enlisted personnel is prohibited.

There are no exceptions.



Lautenber g Amendme nt



Lautenberg Amendment

- Soldiers with a “qualifying conviction”:
 - Will not possess or be issued weapons,
 - Are non-deployable
 - Cannot attend schools
 - Will not be sent OCONUS (but can finish tour if OCONUS)
 - Cannot reenlist (only one year extension)
- Qualifying conviction
 - Misdemeanor Domestic Violence Conviction
 - Special or General Court-Martial Domestic Violence Conviction
- Arrests, Article 15s, and Summary Courts Martial do not count



Other Issues



Homosexual Conduct Policy



- Report to your Trial Counsel immediately!
- Conduct consists of Homosexual Statement, Act, or Marriage (actual or attempted)
 - Statement that "I am homosexual" qualifies as homosexual conduct
- Limited commander's inquiry v. substantial investigation
- Be discreet and respect the soldier



Extremist Activities



- Commanders have authority UP AR 600-20 to prohibit soldiers from activities the cdr determines will adversely affect good order and discipline w/in the cmd.
- This includes authority to order removal of flags, symbols, posters, barracks displays; placing places off-limits; orders not to participate in activities contrary to order or that pose a threat



Drugs are bad

Must initiate administrative
separation action as per AR
600-85





Conclusion

